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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

NO. _____

WOODROW YOKUM,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE FOURTH CIRCUIT COURT OF APPEALS

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QUESTION PRESENTED

May the Respondent Government be entitled to dismissal, of Petitioners motion to show cause why property seized from Petitioner under search warrants in 1967 has not been returned, based on statute of limitations when Petitioner has almost continually from 1967 to present attempted to litigate the issue of the return of property seized is no longer needed in any further criminal proceedings.

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Petitioner Woodrow Yokum,
respectfully prays that a Writ of
Certiorari issue to review the opinion and
judgment of the U. S. Court of Appeals for
the Fourth Circuit in this proceeding.

An Order was entered in the U. S.
Court of Appeals for the Fourth Circuit on
the 22nd day of December 1982, when
Petition for rehearing was denied.

QUESTION PRESENTED

May the Respondent Government be

entitled to dismissal, of Petitioners motion to show cause why property seized from petitioner under search warrants in 1967 has not been returned, based on statute of limitations when petitioner has almost continually from 1967 to present attempted to litigate the issue of the return of property seized is no longer needed in any further criminal proceedings.

STATEMENT OF CASE

During the months of February and March, 1967, pursuant to a series of search warrants issued by the United States District Court for the Northern District of West Virginia, the Respondent seized and impounded a large quantity of personal property which is the subject matter of this suit. The property consisted of automobiles, trailers, trucks, electronic and radio equipment, and other similiar property.

The search warrants alleged that the "property was embezzled, stolen, purloined and converted from the said United States

of America and then concealed and retained with intent to convert said (property) for personal use and gain, in violation of Title 18, Section 641, United States Code".

Following the seizure of the property in issue, two separate federal actions were instituted against Petitioner. The first, commenced in the Northern District of West Virginia, Civil Action 67-91-E, resulted in Petitioner's conviction on Six (6) counts of violating 18 U.S.C. Sec. 2312 (Interstate Transportation of Stolen Property in Interstate Commerce), and Three (3) counts of violating 18 U.S.C. Sec. 641 (Theft of Government Property). However, none of the property which is the subject of this claim was used in that or any other criminal action. The Judgment and Commitment Order was entered on August 5, 1968. On appeal, the Fourth Circuit reversed the District Court as to One (1) count but affirmed Petitioner's conviction as to the remaining counts.

The second criminal proceeding, commenced by indictment in the Eastern

District of Virginia, was dismissed against Petitioner on July 9, 1970. Again none of the property which is the subject of this claim was used in that or any other criminal action.

Petitioner prior to, during and subsequent to Criminal Action No. 67-91-E in the United States District Court for the Northern District of West Virginia, moved for the return of the property. The Respondent resisted motion and advised the United States District Court that all property was being "retained for use as evidence in further investigation and proceedings involving surplus property matters in other jurisdictions and that the Government was retaining the property to be used as evidence". On April 13, 1970, the Petitioner, Woodrow Yokum, by counsel, filed a Motion renewing his earlier Motions for return of the property. That Motion was dismissed by the United States District Court for the Northern District of West Virginia on May 29, 1970.

Petitioner next filed a complaint on July 12, 1973, seeking return of the property or the reasonable value of the property. The district court dismissed that complaint on the basis of sovereign immunity as to the United States, and quasi-judicial immunity as to defendant James Companion, the United States Attorney and the amount in controversy exceeded Ten Thousand Dollars (\$10,000.). Yokum v. United States, et al, C.A.No. 73-105-E (N.D.W.Va. Sept. 13, 1974).

Subsequently, on January 2, 1975, Petitioner filed a claim in the United States Court of Claims seeking compensation for the property seized. In his petition, it was stated he was entitled to the return of all the property taken (Count I), or \$400,000, the reasonable value of that property. Yokum v. United States, No. 2-75 (Ct.Cl. 1975). The petition was denied, and the Court of Claims granted summary judgment for the United States on the basis that the damage claim was barred as a matter of law by the

statute of limitations (App. 52). The Court of Claims denied Petitioner's motion for rehearing and the Supreme Court denied certiorari. Yokum v. United States, 208 Ct. Cl. 972, 529 F.2d 532 (1975), cert. denied, 429 U.S. 820 (1976). The issue on the return of property was not litigated.

Following the action instituted in 1975 in the U. S. Court of Claims (Yokum v. U.S. No. 2-75, 208 Ct Clms 972, 529 F 2d 532) which was dismissed and cert denied barring Yokum by the statute of limitations. The Government instituted an action in the U. S. District Court for the Northern District designated as United States of America v. Woodrow Yokum, Civil Action No. 76-241-E. This was a show cause action by the Government to remove a portion of the subject personal property from Petitioner's real estate. When the Court indicated it would require the Government to establish its ownership in the property, the matter was dismissed on the Governments motion on March 22, 1979 some two (2) years and 150 days after it was instituted.

Petitioner next filed a petition in district court on July 6, 1979, requesting

that the United States be ordered to show cause why it should not be ordered to return to petitioner all the property that has been seized. On February 20, 1981, the District Court for the Northern District of West Virginia dismissed the petition with prejudice on the grounds that the suit is barred by res judicata. Yokum v. United States, C.A. No. 79-0130-E(H) (N.D.W.Va. Feb. 20, 1981).

Petitioner appealed from the U. S. District Court for the Northern District of West Virginia. The Fourth Circuit Court of Appeals in its opinion set aside the issue of res judicata and raised the issue of the statute of limitations thereby barring further adjudication by Petitioner. The defense of statute of limitations was not raised in Respondents motion to dismiss in District Court. The Fourth Circuits answer was that the government cannot be held to have waived this defense. Therefore, the Court applied it and affirmed the judgment of the District Court on other grounds. Yokum v. U. S. U. S. Court of Appeals for the Fourth Circuit, No. 81-1299.

ARGUMENT

April 13, 1970 motion was made in criminal action United States v. Yokum, No. 67-91-E in the U. S. District Court for the Northern District of West Virginia, for the return of property seized by the Respondent, United States of America. The Honorable Robert Maxwell, Judge, could have and Petitioner believes should have then determined this issue. An order then would save further expense to Petitioner and Respondent and expedite the matter of the return of the property. Judge Maxwell declined to do so requiring the Petitioner to bring a separate civil action. On May 29, 1970 Judge Maxwell issued the order below.

"Ordered that the Court ruling on the defendants motion for the return of property and for the rental of property seized, for reasons appearing on the record, is made without prejudice to the defendants right to prosecute a civil action for the return of the property and for the rental of the property seized."

Petitioner argues before this Court the issue of the return of the property

has not been addressed by this or any other Court. It is the duty of the Respondent United States of America, after the need or use of seized property pursuant to search warrant, to either establish the seized property as contraband, fruits of the crime subject to forfeiture or confiscation or return to the owners of the property if that can be established or the parties from whom they were taken. There can be no dispute this has not been done.

It is rather interesting to review United States of Americas brief on the statute of limitations concerning Petitioners lack of diligence and the government being prejudiced, "the longer the delay, the less the need to search for specific indices of prejudice" Grisham v. United States, 392 F.2d 980, 983 (Ct.Cl.), cert. denied 393 U.S. 843 (1968). There is no question delays make the prosecution as well as the defense of an action difficult however we would submit any delays have not been as a result of the Petitioners lack of diligence to attempt

to prosecute this matter. The Respondents further statement "...an Appellant has offered no legitimate excuse for the delay, particularly the period between Appellants last suit in the Court of Claims in 1975 and the suit in the District Court", is an utter misrepresentation of the facts. Petitioner attempted to litigate return of property in response to Governments motion to show cause to remove the property from Petitioners own real estate. When challenged by Petitioner to prove Governments ownership vis-a-vis search warrants the government voluntarily dismissed the action U. S. v. Yokum, C.A. No. 76-241-E.

Three (3) years and seventy three (73) days later on July 12, 1973 the Petitioner instituted an action in the U. S. District Court for the Northern District of West Virginia, Yokum v. United States, et al, 73-105-E. The Court, on September 13, 1974, some approximately 429 days after it was filed, dismissed the suit. On January 2, 1975, 110 days after the dismissal of the action in the U. S.

District Court Petitioner instituted a suit in the U. S. Court of Claims denoted, Yokum v. United States, No. 2-75. Some approximately two (2) years and twenty two (22) days elapsed while this matter in the Court of Claims and its appeal was prosecuted. Eighteen (18) days after certiorari was denied by the Supreme Court of the Court of Claims decision, Respondent instituted suit in the U. S. District Court for the Northern District of West Virginia in Civil Action 76-241-E. This matter was dismissed upon motion of the Respondent on March 22, 1979 some two (2) years and one hundred fifty (150) days after it was instituted by the Respondent. On July 6, 1979 some one hundred six (106) days after the show cause proceeding had been dismissed by Respondent the Petitioner initiated this proceeding in the U. S. District Court for the Northern District of West Virginia denoted as Woodrow Yokum v. United States, Civil Action 79-130-E(H). This action was dismissed by the Honorable Charles E. Haden on February 22, 1981.

The Fourth Circuit ruled the six (6) year statute of limitations prevails pursuant to 28 USC Sec. 2401. The question is if the six (6) years began to run with May 29, 1970, was this six (6) year statute of limitation period tolled pending Petitioners attempt to litigate the return of the property? Three (3) years and seventy three (73) days would have elapsed from May 29, 1970 until the Petitioner instituted his first action towards the return of the property on July 12, 1973. During the pendency of that suit or until September 13, 1974, a period of four hundred twenty nine (429) days or one (1) year and sixty four (64) days of the six (6) years of statute of limitations was tolled during the period of litigation.

This Court should find the suit instituted by Petitioner, Yokum v. United States, 2-75 (Ct. Clms) in the Court of Claims some one hundred ten (110) days after the dismissal of the action by the U. S. District Court, the statute of limitations was again tolled from January

2, 1975 for some period of two (2) years and twenty two (22) days until October 4, 1976. This would mean up to that particular period of time only, i.e. from May 29, 1970 to October 4, 1976, only three (3) years, one hundred eighty three (183) days of the six (6) year statute of limitations had expired.

Within 18 days of certiorari being denied the matter of the subject property was again brought before a Federal Court when the Respondent initiated its show cause order on October 22, 1976 in the U. S. District Court for the Northern District of West Virginia. This litigation again tolled the statute of limitations because the issue of return of the property was again in the breast of the Court when Petitioner replied to Respondents Show Cause Petition requesting return of the property. This action tolled for an additional two (2) years one hundred fifty (150) days or until March 22, 1979 when upon Respondents own motion the matter was dismissed.

Some one hundred six (106) days later or on July 6, 1979 the present show cause action was instituted by the Petitioner. Therefore since the last motion for the return of the property was ruled on in the criminal action 67-91-E on May 29, 1970, to the present only three (3) years three hundred seven (307) days of the statute of limitations has expired. The balance of the statute of limitation in time having been tolled while the issue of the return of property was in litigation in a court which would have jurisdiction over the subject matter.

It is well established the Courts of the United States have a duty to oversee the operation of the United States Government and its agencies, with oversight the Government does not abuse the powers of the search warrant and the processees through which the Courts permit the government to operate. The U. S. District Court for the Northern District of West Virginia in criminal action 67-91-E had an opportunity to resolve these matters in

May 1970 and with regret, expense and delay, unfortunately refused to do so.

The Federal Courts have been granted supervisory powers to resolve issues of abuse by government. Slocum v. Mayberry, 2 wheat. 1,9, 4 L ed 169 (1817), in re Behrens, 39 F.2d 561 (2d Cir. 1930). The Respondent had failed to institute any forfeiture or confiscation proceedings after the original criminal action 67-91-E had ended, as required in United States v. Wilson, 176 U.S. App. D.C. 321, 540 F.2d 1100 (1976) at 1103-04. This Court, as stated in Rule 17(a) of the Rules of the U. S. Supreme Court has the power of oversight as the Courts below, have a duty to see that the powers granted to the Respondent are not misused.

There can be no excuse by the Respondent for its failure to initiate a timely action for forfeiture and confiscation of the seized property after it was no longer required in any prosecution or lead to further prosecution. Not to do so as pointed out before reflects an abuse of process on the

part of the United States of America. This Court, as the Courts below, has the power to supervise the actions of United States of America to see the United States of America is required to do that which it is required, obligated and should do. Slocum v. Mayberry, supra, in re Behrens, supra.

Federal Courts have the general equitable power to oversee and order the return of property seized although no criminal action is pending. Richey v. Smith, 515 F.2d 1239, 1242-3 5th Circuit 1975 (cited with authority) and Hill v. McMartin, 432 F.Supp 99(1977). And in the case of United States v. Arch A. Moore, Jr., 423 F. Supp 858 (1976) the Court held

"... the Government's continued retention of Moore's records and possessions is an abuse of prosecutorial power and violative of what is a limited grant of power to force individuals, through legal procedures, to give up control of documents and other objects. It is out of keeping with the function and purpose of the subpoena power as provided by statute and it is at odds with the existing case law."

The Petitioner has with diligence attempted to litigate the matter of the return of the property. It was and is the duty of Respondent to go forward and resolve the return of the property.

As in Slocum v. Mayberry, supra, the Court, in 1817, held

"...if the seizing officer (in this case appellee) should refuse to institute proceedings to ascertain the forfeiture, the district court may, upon application of the aggrieved party, compel the officer to proceed to adjudication, or to abandon the seizure." (Emphasis added)

This is what the Petitioner has been attempting to do almost continuously since 1970.

By Motion and Order in Yokum v. United States, C.A. No. 79-0130-E(H) the U. S. District Court for the Northern District of West Virginia, dated the 4th day of February, 1983, The Honorable Charles H. Haden, II, Judge, found Petitioners response, as asserted, to Respondents Motion for disposition of

property to be frivolous in law at this point in the litigation and issued an order directing the U. S. Marshall to dispose of Petitioners property and account for after disposition. The Courts and government refuses to address the basic question that search warrants don't divest parties interest in property taken from them. Thus how has title been vested in Respondent to now dispose of the same and what is to be done with the proceeds (money) accrued by the Marshalls in disposition of the same?

Petitioners asserted in response to Governments Motion to immediately dispose of the seized property that time was not of the essence since subject property had been stored since 1977. Further Petitioner advised the U. S. District Court he intended to commence this appeal and asked stay until decision is made on this matter. Petitioner avered the subject property has been for in all effect abandoned by Respondent. The Respondent, and the U. S. District Court are in error in now saying "all appellate

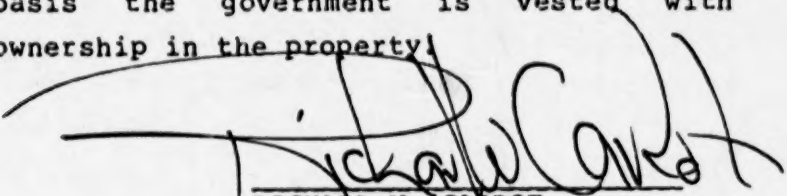
action has been concluded..." and the case has now been returned to the jurisdiction of the District Court. Further such Motion for an Order to dispose of the property should not have been granted without oral argument and hearing. Notwithstanding Petitioners defense of the tolling of the statute of limitations or arguing in the alternative that if Petitioner is barred by the statute of limitations Respondent is barred on the same grounds.

Therefore, there is nothing in the record to support Respondents are vested with title to and power of disbursement for disposition of the seized property without more.

CONCLUSION

The Courts below have so widely departed from the established principles controlling search warrants and the disposition of seized property in this matter as to warrant this Courts power of supervision. Petitioner has exhausted each and every remedy to effectuate a

hearing on the merits in this matter. Even now with the Court below Order to the Government to dispose of the seized property the Respondents and the Courts below abuse the usual course of judicial proceedings to the detriment of Petitioner. Petitioner prays this Court to stay disposal of the property pending this appeal and reverse the decision of the Courts below and remand with directions to hear Petitioners show cause Petition on what basis the government is vested with ownership in the property!



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